

# Dutch court refuses to interfere with proceedings in the US for enforcement of an award (Amsterdam District Court)

by *Practical Law Arbitration*, with *OSK Advocaten*

Legal update: case report | Published on 24-Apr-2023 | The Netherlands

---

The Amsterdam District Court has given two related judgments refusing to interfere in US proceedings to enforce an Energy Charter Treaty **arbitration** award. In *Spain v AES and others* (ECLI:NL:RBAMS:2023:1542), the court refused to order AES and others to withdraw a motion of substitution filed in US enforcement proceedings, and in *Spain v BRI* (ECLI:NL:RBAMS:2023:1541), the court ruled that it lacked jurisdiction to order BRI not to seek an anti-suit injunction.

---

*Geert Wilts and Benjamin Smalhout, OSK Advocaten*

The Amsterdam District Court has given two judgments refusing to interfere in US proceedings to enforce an Energy Charter Treaty (ECT) award rendered against Spain in a Swiss-seated **arbitration**.

In *Spain v AES and others*, the court ruled that two Dutch investment companies and their directors were not required to withdraw a motion of substitution, which sought to replace them with a US company (BRI) in the US enforcement proceedings. In *Spain v BRI*, the court held it lacked jurisdiction to order BRI to refrain from seeking an anti-suit injunction in the US proceedings.

In *Spain v AES*, Spain argued that payment of the award would breach EU state aid law and was contrary to the European Court of Justice ruling in *Slowakische Republik v Achmea BV* (Case C-284/16) (Achmea). The court held that Spain was seeking to avoid the US enforcement proceedings. Challenges to an award must be brought before the courts of the seat (Spain's challenge to the award had already been rejected by the Swiss courts), while enforcement proceedings must be brought in the courts of the country where enforcement is sought. Spain's claim in the Dutch courts was an attempt to create a new and non-existent forum to challenge the award.

The court also ruled that it was unclear how the motion of substitution prevented Spain from asserting defences to enforcement in the US proceedings. Indeed, Spain could assert the same defences against BRI, as legal successor, as it could have against the original award creditors. An order to withdraw the motion would amount to an impermissible restriction on access to justice.

Further, the court ruled that Spain's EU state aid objections should have been raised in the **arbitration**, and in the set-aside, and enforcement proceedings. Spain's argument that *Achmea* rendered the relevant **arbitration** agreement invalid was also incorrect given the debate about the application of that ruling to ECT awards.

In *Spain v BRI*, the court held that it lacked jurisdiction to order BRI to refrain from seeking anti-suit relief from the US courts, requiring Spain to refrain from its claims against AES and others in the Netherlands. The Swiss courts had exclusive jurisdiction in set-aside proceedings and the US courts in the enforcement proceedings.

This is a robust, pro-enforcement decision from the Dutch court, clarifying the roles of different courts in challenge and enforcement proceedings.

Cases: *Spain v AES and others* (ECLI: NL:RBAMS:2023:1542) (6 March 2023) and *Spain v BRI* (15 March 2023) (ECLI:NL:RBAMS:2023:1541).

---

END OF DOCUMENT